IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s)   :   Douglas Monticciolo

Application No.   :   09/805,522

Filed   :   March 13, 2001

Title   :   METHOD OF COST EFFECTIVELY FUNDING A LOAN

TC/AU   :   3695

Examiner   :   Subramanian, Narayanswamy

Docket No.   :   198191/0004

DECLARATION OF RONALD M. DAVIDOW UNDER 37 C.F.R. §1.132

I, Ronald M. Davidow, declare the following:

1.   I have reviewed the published version of U.S. Application Serial No. 09/805,522 (the "Application") and have considered the proposed claims annexed hereto as Exhibit A (the "Proposed Claims"). I understand the Application was filed on March 13, 2001 (the "Filing Date") and claims priority to an earlier application filed on March 13, 2000 (the "Priority Date"). I understand that this Declaration is intended to form part of a response to be filed with the U.S. Patent and Trademark Office in the Application.

2.   I have no financial stake in the outcome of these proceedings before the U.S. Patent and Trademark Office and have no financial stake in the Application (or resulting patent, if any). I am not being compensated for submitting this declaration.

3.   I have a B.B.A. from City University of New York, Baruch School of Business and

completed course work toward an M.B.A. at New York University, Graduate School of

Business.

4.   I have over 38 years of experience working in the industries to which the invention

claimed in the Application is directed, namely the finance and insurance industries.

5.   As detailed in my CV, which is attached hereto as Exhibit B, from February 2005 to the

present, I have been employed as the President and Chief Operating Officer (COO) of Maple

Trade Finance Corp. As President and COO, my experience has included: winding-down an

international trade finance company involved in cross-border secured lending; factoring; private-

equity; venture capital; project finance lending; and disposing over $600 million in loans.

6.   From 1971 to 1976, I worked as an auditor for the Insurance Company of North America

and was the Managing Vice President of Insurance Ratings at Standard and Poor's Corp. from

1976 to 1984. I then served as the Senior Vice President of FGC Services, Inc. from July 1984

to November 1986, where I was a member of the founding management of the first monoline

financial guaranty reinsurance company, Enhance Reinsurance Company. Thereafter, I served as

Executive Vice President of Enhance Financial Services Group (EFSG) and Enhance

Reinsurance Company, President of Asset Guaranty Insurance Company, and President of

Enhance Reinsurance Company (Bermuda) from November 1986 to June 2000. While working

for EFSG, I developed relationships with primary insurers, developed financial-related insurance

and reinsurance products, developed the global credit insurance reinsurance business, provided

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unrated reinsurance capacity to the financial guaranty and other markets, and formed and

developed various companies involved in providing debt financing. I later joined FCS Advisors,

Turing Capital, and Brevet Capital, serving as Managing Director from July 2000 to February

2005, where I worked with the named inventor on the Application. There, I advised corporate

clients regarding equity and debt financing and organized asset-backed and secured transactions.

I am no longer employed by either FCS Advisors, Turing Capital, or Brevet Capital.

7.   As a result of my employment experience, by the Priority Date and to a greater extent by

the Filing Date, I became familiar with the use of computers and computer networks in the

finance and insurance industries. Indeed, by this time computers were routinely used in these

industries.

8.   I understand that a hypothetical person of ordinary skill in the field to which the

Application is directed, namely finance and insurance, at the time of the invention, is relevant to

the issues being considered. I have been apprised that the Manual of Patent Examining

Procedure §2141.03, attached hereto as Exhibit C, describes such a hypothetical person, who "is

presumed to have known the relevant art at the time of the invention" and is capable of

"understanding the scientific and engineering principles applicable to the pertinent art." Based

on my years of working in these industries, I believe that such hypothetical person, as of the

Priority Date and Filing Date, would have been a person with a degree in business or finance and

having work experience in finance and insurance matters. By virtue of such education and

experience, the person of ordinary skill would have been exposed to the use of computers and

computer networks in such industries and aware of the purposes to which computers could be put in such industries.

9. Based on my education and employment experience, I consider myself to have been one of at least ordinary skill in the field to which the Application is directed as of the Priority Date and Filing Date.

10. I understand, and I believe that such a person of ordinary skill in the field would have understood (i.e., as of the Priority Date and the Filing Date), that Paragraph 0016 of the Application broadly describes the use of a computer, including its various components (e.g., permanent and temporary electronic memory, input and output devices, etc.), operable in connection with software residing in memory and an electronic network. As discussed below, this introductive paragraph sets forth the basic premise that computers can be used to implement the method described in the Application. Indeed, Paragraph 0016 begins with this broad notion, reciting, "[t]he inventive method may be carried out in connection with a computer connectable to a network." This principle is carried throughout the Application, as I note below. Additionally, Paragraph 0016 confirms that those of skill in the field were familiar with computers. ("It is known to person skilled in the art that a computer may comprise some or all of those components, in addition to components not listed.")

11. Like paragraph 0016, Paragraph 0018 confirms the use of computers in carrying out the method described in the Application. Specifically, paragraph 0018 describes the process

disclosed in the Application being implemented on multiple computers that are connectable to an

electronic network:

> Referring now to the drawings, FIG. 1 depicts the relationship between and among the various parties to a loan origination, funding, maintenance and insurance, and FIG. 2 is a schematic block diagram of a lender and borrower communicating over a network in accordance with the present invention.

As shown in FIG. 2 (and described at least in Paragraph 0019 of the Application), the reinsurer

may be part of the lending institution and, thus, have access to the lender computer. Paragraph

0018 still further confirms that the described method is capable of being implemented on

computers:

> While the **present invention and the description thereof provided herein preferably utilizes computers connectable to a network** (i.e., on-line loan transactions).

I understand, and I believe that such a person of ordinary skill would have understood, that

Paragraph 0018 describes utilizing the computers to carry out the functions of loan origination,

funding, maintenance, and/or obtaining insurance. This understanding is consistent with the

state of the art as of the Priority Date and Filing Date.

12.   Paragraph 0019 further confirms that the method of the Application may be implemented

via computers. In general, Paragraph 0019 discusses multiple computers connectable to an

electronic network operable in connection with software and the use of such computers by the

lender and the borrower to implement the process disclosed in the Application. I understand, and

I believe such a person of ordinary skill would have understood, that Paragraph 0019 describes a

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process by which the lender may originate a loan process, request and exchange data regarding a loan, verify information regarding a loan, negotiate the terms of a loan, evaluate the credit risk of the borrower, and accept or reject a borrower's loan request using computers in conjunction with software. In this regard Paragraph 0019 has broad disclosure, for example:

> All of the above-described information, and other information known to a person of skill in the art, may be communicated between the lender 12 and borrower 20 via computers (each of the lender 12 and borrower 20 having a computer as depicted in FIG. 2).

Moreover, Paragraph 0019 makes it clear that references in the Application to "borrower" and to "lender" are to be understood in context as referring to the borrower computer and lender computer, respectively. For example, Paragraph 0019 recites information is "communicated from the borrower 20 (the borrower's computer 22)" thus equating the borrower with the borrower computer. Similarly, Paragraph 0019 equates the lender with the lender computer:

> Lender 12 (i.e., lender's computer 120) may compare the various information obtained about the borrower 20 with certain predetermined criteria.

13. I understand, and I believe such a person of ordinary skill would have understood, that Paragraph 0019 also discloses that the computers performing these functions may send or receive data from external databases. In this regard, paragraph 0019 recites:

> Preferably, software provided on the lender's computer 120 confirms the veracity of the information received from the borrower 20 and obtains further information about borrower 20 from external databases 80 such as credit bureaus, judgment rolls of various courts and the like.

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14.   Paragraph 0020 further provides that the disclosed process can be implemented on a

computer that includes a processor and software. I understand, and I believe such a person of

ordinary skill would have understood, that Paragraph 0020 describes using a computer and, more

specifically, that the computers include a processor operable in connection with software to

receive information regarding loans, analyze the credit risk of the borrower, and approve or

reject the loan based on the borrower's credit risk. Notably, Paragraph 0020 continues to address

the broad applicability of computers to the method described in the Application by noting

specified functions **and more** can be performed by the lender computer:

> The lender's computer 120 preferably includes a processor and software operable in connection therewith **for, by way of example and not limitation**, receiving information from the borrower 20 for a loan request, determining a credit risk of the borrower 20 from the information received, and approving or rejecting the loan request based on the determined credit risk.

Indeed, as of the Priority Date and the Filing Date, computers were used in the finance and

insurance industries for the purpose of performing analyses like this, and such a person of

ordinary skill in the field would have understood the Application to describe such a use of a

computer.

15.   Paragraphs 0021 and 0022 further discuss the lender approving loans and conducting due

diligence with respect to loan applications, which I understand, and I believe such a person of

ordinary skill would have understood, to describe the lender using a computer connectable to an

electronic network to receive loan requests and data associated with such loan requests received

from borrowers, evaluating the credit risk of a borrower based on such data, and approving (or

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denying) a loan request based on the borrower's credit risk. This follows from Paragraph 0020, which explicitly notes the lender computer can be used to determined whether to approve or deny a loan based on credit risk.

16.   Paragraph 0031 also discusses the process disclosed in the Application as being implemented on multiple computers with at least one computer having an electronic database. Paragraph 0031 further notes that the insurer has a computer with access to an electronic "database maintained on the lender's computer 120; the database having stored therein all pertinent information about borrowers and loans." I understand, and I believe such a person of ordinary skill would have understood, that Paragraph 0031 describes storing data regarding borrowers and loans in an electronic database so that an insurer may monitor the lender's activities and set premiums. It is also my understanding, and I believe such a person of ordinary skill would have understood, that the computer on which the information is stored is capable of accessing and using the stored data to evaluate the risk allotted with each loan. Indeed, Paragraph 0031 begins by referring to a prior discussion, and such prior discussion includes Paragraphs 0020-23 and the use of the computers in conducting due diligence.

17.   Reading the Application as a whole, I understand, and believe that such a person of ordinary skill in the field would have understood, that Paragraph 0016 and the computer implementation applies to the entire process described in the Application, hence the disclosure made in the Application may be implemented, in part or in whole, by electronic and computer elements. I reach this conclusion based on the written Application and also on my personal knowledge, experience working in the finance and insurance industries, and industry practice as

of the Priority Date and the Filing Date. As discussed above and summarized in the following

paragraphs, my conclusion is confirmed by the continued reference to the use of one or more

computers and computer elements throughout the Application, such as in Paragraphs 0016, 0018,

0019, 0020, 0021, 0022, 0031, which all discuss a computer implementation of the processes

disclosed in the Application.

18.   In particular, the Application in Paragraph 0019 (by reciting "the borrower 20 (the

borrower computer 22)" and "Lender 12 (i.e., lender computer 120)") equates actions taken by

the borrower with using the borrower computer to take such actions and actions taken by the

lender 12 with using the lender computer 120 to take such actions.

19.   Furthermore, the Application includes broad statements as to the applicability of

computers to the entire method described in the Application (not just discrete steps), including:

> The **inventive method** may be carried out in connection with a computer connectable to a network such as, for example, LAN, WAN, intranet, Internet (including the World-Wide Web), cellular, etc. (Paragraph 0016);

> . . . the **present invention and the description thereof provided herein** preferably utilizes computers connectable to a network (i.e., on-line loan transactions) . . . (Paragraph 0018); and

> The lender's computer 120 preferably includes a processor and software operable in connection therewith **for, by way of example and not limitation**, receiving information from the borrower 20 for a loan request, determining a credit risk of the borrower 20 from the information received, and approving or rejecting the loan request based on the determined credit risk. (Paragraph 0020).

20.   I have read Proposed Claim 27 and, based on my experience and knowledge of industry

practice and understanding of the Application as described above, I understand, and I believe

such a person of ordinary skill would have understood, that the method of Proposed Claim 27 is

described in the Application. For example, Proposed Claim 27 recites a computer memory

product capable of:

>   receiving data regarding requests of borrowers related to the pool
>   of loans and storing the data in electronic memory;

and

>   accessing the data from electronic memory . . . .

In support, Paragraph 0016 of the Application describes ROM and RAM, which one of ordinary

skill would have understood at the time of filing as the recited computer memory product to be

used for containing software code for operating the processor. Additionally, Paragraphs 0019

and 0031 describe the use of computers to receive, store, and access data, as recited by Proposed

Claim 27. In this regard, Paragraph 0019 recites:

>   Preferably, software provided on the lender's computer 120
>   confirms the veracity of **the information received** from the
>   borrower 20 and **obtains further information about borrower 20
>   from external databases 80** such as credit bureaus, judgment rolls
>   of various courts and the like, and

Paragraph 0031 recites:

>   In a preferred embodiment, the insurer 40 may **access a database
>   maintained on the lender's computer** 120; the database having
>   stored therein all pertinent information about borrowers and loans.

Proposed Claim 27 also recites a computer memory product capable of:

> analyzing the data to determine risk associated with the pool of loans having an aggregate amount of the pool of loans, the risk including a risk of a first loss and a risk of loss other than the risk of the first loss, the first loss being a percentage of the aggregate amount of the pool of loans, the lending institution assuming the risk of the first loss by providing a first loss financial guaranty to the insurers;

This is supported by Paragraphs 0019 and 0020, which describe using a computer in conjunction with software to analyze the data received for risk as recited in Proposed Claim 27. In this regard, Paragraph 0019 recites:

> Lender 12 (i.e., lender's computer 120) may compare the various information obtained about the borrower 20 with certain predetermined criteria. That analysis provides an initial determination as to the amount of risk associated with the loan,

and Paragraph 0020, which immediately follows, continues:

> The lender's computer 120 preferably includes a processor and software operable in connection therewith for . . . receiving information from the borrower 20 for a loan request, determining a credit risk of the borrower 20 from the information received, and approving or rejecting the loan request based on the determined credit risk.

21. I have read Proposed Claim 33 and I understand, and I believe such a person of ordinary skill would have understood, that the method of Proposed Claim 33 is described in the Application. For example, Proposed Claim 33 recites:

> providing a lender computer connected to an electronic network, the lender computer including one or more processors configured in accordance with software to:

>> receive via the electronic network data regarding loan requests of one or more borrowers, the data including data regarding personal and financial information of each borrower;

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As I discussed above, a person of ordinary skill in the field would have understood that

computers could be used to perform the various acts described in the Application. With regard

to this limitation, Paragraphs 0019 and 0022 describe using a computer connectable to an

electronic network to receive data. In this regard, Paragraph 0019 states:

> In a preferred embodiment, the lender 12 and borrower 20, using a computer 22, will access a website provided by the lender's computer 120 (or provided on a computer (server) maintained for or on behalf of the lender 12), fill in certain on-line forms, and transmit the information provided via the on-line forms to the lender's computer 120,

and

> Preferably, software provided on the lender's computer 120 confirms the veracity of the information received from the borrower 20 and obtains further information about borrower 20 from external databases 80 such as credit bureaus, judgment rolls of various courts and the like.

Proposed Claim 33 also recites:

> analyze the data regarding each of the loan requests of the one or more borrowers to determine a risk associated with making a loan to each borrower;

In support of this limitation, Paragraphs 0019, 0020, and 0021 describe using a computer

to analyze the data received for risk, as recited in Proposed Claim 33. In this regard Paragraph

0019 states:

> Lender 12 (i.e., lender's computer 120) may compare the various information obtained about the borrower 20 with certain predetermined criteria. That analysis provides an initial determination as to the amount of risk associated with the loan . . .

and Paragraph 0020, which immediately follows, continues:

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> The lender's computer 120 preferably includes a processor and software operable in connection therewith for, by way of example and not limitation, receiving information from the borrower 20 for a loan request, determining a credit risk of the borrower 20 from the information received . . .

Proposed Claim 33 additionally recites:

> approve for inclusion in the pool of loans, loans associated with the loan requests of the one or more borrowers where the risk associated with making the loans falls within lender risk criteria;

This limitation is supported by Paragraphs 0019 and 0020, which describe the lender computer approving or rejecting loans depending on whether the risk associated with the loan falls within the lender's risk criteria. In this regard, Paragraph 0019 states:

> If the result of the analysis falls out of bounds of the predetermined criteria, then the risk may be too great and lender 12 will send a rejection response to borrower 20 or may refer borrower 20 to another lender, and

Paragraph 0020, which immediately follows, continues:

> The lender's computer 120 preferably includes a processor and software operable in connection therewith for, by way of example and not limitation . . . approving or rejecting the loan request based on the determined credit risk.

Proposed Claim 33 further recites:

> retrieve from electronic memory data regarding the loans approved for inclusion in the pool of loans;

Paragraph 0031, which describes an accessible database maintained on the lender computer containing "all pertinent information about borrowers and loans," supports this limitation.

22. The Application also makes clear that the risk of loss includes both a risk of first loss and a risk of loss other than the first loss. Thus, I understand, and I believe such a person of ordinary

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skill would have understood, that because there is a first loss, it inherently follows that there is a

loss other than the first loss, hence, a risk of first loss necessarily implicates a risk of loss other

than the risk of first loss. At least Paragraphs 0009, 0010, 0019, 0029, and 0034 confirm that a

risk of first loss necessarily implicates a risk of loss other than the first loss. For example,

Paragraphs 0019, 0029, and 0031 identify the risk of the loans and Paragraph 0029 identifies the

first loss protection associated with the risk of first loss. In this regard, Paragraph 0019 states:
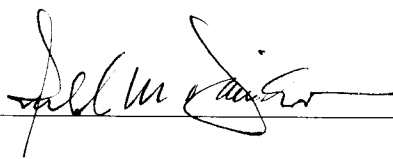
> That analysis provides an initial determination as to the **amount of
> risk associated with the loan**, and

Paragraph 0029 describes the first loss:

> . . . [R]einsurer 14, which may be affiliated with the lender 12 (i.e.,
> part of the lending institution 10), or may be a third party, provides
> **first loss reinsurance protection to the insurer 40 for losses on
> a predetermined percentage of total loans** originated for a
> predetermined period. As used herein, the term **"first loss
> protection" refers to the reinsurer 14 satisfying any payment
> obligations (up to a predetermined amount) caused by or as a
> result of borrower default. For example, the reinsurer 14 may
> provide first loss reinsurance for losses on 2% of the total loan
> amount** originated for each year until the loan pool matures. The
> insurer 40 will pay the reinsurer 14 a predetermined amount on
> outstanding loans per annum for the reinsurance protection.

23.   I hereby declare that all statements made herein of my own knowledge are true and that

all statements made on information and belief are believed to be true; and further that these

statements were made with the knowledge that willful false statements and the like so made are

punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States

Code and that such willful false statements may jeopardize the validity of the Application or any

patent issued thereon.

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Signature: _____

Ronald M. Davidow

Dated: May 21, 2009

EXHIBIT A

1.   (currently amended) A method of a lending institution funding a pool of loans, with one or more insurers, the pool of loans having associated therewith a first rating or no rating, an aggregate amount and a first loss, the insurers having a second rating greater than the first rating, the method comprising:

the lending institution assuming risk of the first loss by providing a first loss financial guaranty, the first loss being a percentage of the aggregate amount of the pool of loans;

the lending institution transforming the pool of loans from having the first rating or no rating to having the second rating by transferring the loans to an entity that secures insurance for the loans from the insurers, and transferring a risk of loss other than the first loss to the insurers, the entity having a second rating greater than the first rating and issuing a note based on the pool of loans and securing proceeds by issuing the note based on the pool of loans and theits second rating, ;the proceeds in an amount greater than that which the lending institution could secure due to the second rating being greater than the first rating or no rating;

the lending institution receiving the proceeds based on issuing the note from the entity in return for transferring the loans to the entity; and

the lending institution funding the loans using the proceeds.;

maintaining an electronic database on a computer having memory; and

storing information about the loans in the database.

2.   (previously presented) A method as recited by claim 1, wherein the lending institution comprises a lender and a reinsurer, and wherein the first loss financial guaranty is reinsurance provided by the reinsurer, and wherein the pool of loans is a pool of loans of the lender.

3.   (previously presented) A method as recited by claim 1, wherein the lending institution comprises a lender and a reinsurer, and wherein the first loss financial guaranty is reinsurance provided by the reinsurer, and wherein the pool of loans is a pool of loans of a third party.

4.   (cancelled)

5.   (cancelled)

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6.   (currently amended) A method as recited by claim 15, wherein the entity comprises a bankruptcy-remote entity and a trust.

7-26.   (cancelled)

27.   (new) A computer memory product having computer readable program code embodied thereon, the computer readable program code adapted to be executed by one or more processors to implement a method of a lending institution funding a pool of loans with one or more insurers, the pool of loans having associated therewith a first rating or no rating and the insurers having a second rating greater than the first rating or no rating, the method comprising:

receiving data regarding requests of borrowers related to the pool of loans and storing the data in electronic memory;

analyzing the data to determine risk associated with the pool of loans having an aggregate amount of the pool of loans, the risk including a risk of a first loss and a risk of loss other than the risk of the first loss, the first loss being a percentage of the aggregate amount of the pool of loans, the lending institution assuming the risk of the first loss by providing a first loss financial guaranty to the insurers; and

accessing the data from electronic memory and, based on the data, the lending institution securing insurance for the loans from the insurers, thereby transforming the pool of loans from having the first rating or no rating to having the second rating and transferring the risk of loss other than the risk of first loss to the insurers, the lending institution receiving the proceeds from an entity in return for transferring the loans to the entity and funding the pool of loans based on the data and using the proceeds.

28.   (new) The computer memory product of claim 27, wherein the lending institution transfers the loans to an entity and the entity secures insurance for the loans from the insurers.

29.   (new) The computer memory product of claim 27, wherein the lending institution comprises a lender and a reinsurer, and wherein the first loss financial guaranty is reinsurance provided by the reinsurer, and wherein the pool of loans is a pool of loans of the lender.

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30. (new) The computer memory product of claim 27, wherein the lending institution comprises a lender and a reinsurer, and wherein the first loss financial guaranty is reinsurance provided by the reinsurer, and wherein the pool of loans is a pool of loans of a third party.

31. (new) The computer memory product of claim 27, wherein the entity comprises a bankruptcy-remote entity and a trust.

32. (new) The computer memory product of claim 27, wherein the entity issues a note based on the pool of loans and securing proceeds by issuing the note based on the pool of loans and the second rating, the proceeds in an amount greater than that which the lending institution could secure due to the second rating being greater than the first rating.

33. (new) A computer-implemented method of a lending institution funding a pool of loans with one or more insurers, the pool of loans having associated therewith an aggregate amount and a first rating or no rating, the insurers having a second rating greater than the first rating, the method comprising:

providing a lender computer connected to an electronic network, the lender computer including one or more processors configured in accordance with software to:

receive via the electronic network data regarding loan requests of one or more borrowers, the data including data regarding personal and financial information of each borrower;

analyze the data regarding each of the loan requests of the one or more borrowers to determine a risk associated with making a loan to each borrower;

approve for inclusion in the pool of loans, loans associated with the loan requests of the one or more borrowers where the risk associated with making the loans falls within lender risk criteria; and

retrieve from electronic memory data regarding the loans approved for inclusion in the pool of loans;

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providing a first loss financial guaranty for the pool of loans, the lending institution assuming a risk of a first loss, the first loss being a percentage of the aggregate amount of the pool of loans;

transferring the pool of loans to an entity that secures insurance for the loans from the insurers, thereby transferring a risk of loss other than the risk of first loss to the insurers and securing proceeds based on the pool of loans and the second rating, the proceeds in an amount greater than that which the lending institution could secure due to the second rating being greater than the first rating or no rating;

receiving the proceeds in response to transferring the pool of loans to the entity; and

the lending institution causing the pool of loans to be funded based on the data and using the proceeds.

34. (new) The computer-implemented method of claim 33, wherein the lending institution comprises a lender and a reinsurer, and wherein the first loss financial guaranty is reinsurance provided by the reinsurer, and wherein the pool of loans is a pool of loans of the lender.

35. (new) The computer-implemented method of claim 33, wherein the lending institution comprises a lender and a reinsurer, and wherein the first loss financial guaranty is reinsurance provided by the reinsurer, and wherein the pool of loans is a pool of loans of a third party.

36. (new) The computer-implemented method of claim 33, wherein the entity comprises a bankruptcy-remote entity and a trust.

37. (new) The computer-implemented method of claim 33, wherein the entity issues a note based on the pool of loans and securing proceeds by issuing the note based on the pool of loans and the second rating, the proceeds in an amount greater than that which the lending institution could secure due to the second rating being greater than the first rating.

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EXHIBIT B

Ronald M. Davidow

30 Freedomway

Jersey City, New Jersey 07305

Maple Trade Finance Corp. (February 2005 to present)

President and Chief Operating Officer

Recruited by parent company to restructure and then wind-down an international trade finance company primarily involved in cross-border secured lending, but also factoring, private-equity, venture capital and project finance lending. Successfully ran-off or disposed of over $600 million of the initial $700 million of loans (35 loans in eight countries). Reduced staff from 50 employees to three over three years. Report to Maple Financial Group in Toronto, Canada and handle relationship with affiliated funding bank in Frankfurt, Germany.

FCS Advisors/Turing Capital/Brevet Capital (July 2000 – February 2005)

Managing Director

Joined FCS/Turing Capital to help establish a national small business lender. Also offered advisory services to companies seeking equity or debt financing. In 2004, FCS joined with a hedge fund to originate asset-backed and secured transactions. Led the formation and execution of a fund to invest in personal injury lawsuits.

Enhance Financial Services Group (November 1986 – June 2000)

Executive Vice President – EFSG and Enhance Re
President – Asset Guaranty Insurance Company
President – Enhance Re (Bermuda)

Member of founding management of first monoline financial guaranty reinsurance company, rated "AAA" at inception, raising capital from an international group of financial institutions. Company went public on the NYSE in 1992. Primarily responsible for diversifying the group out of financial guaranty reinsurance into businesses that utilized the credit strengths of the company, although initially served in business development and later head of the credit/underwriting group.

Enhance Re: Initially responsible for developing relationships with primary insurers while Enhance being capitalized. Company wrote $49 million of premium in first month of operation. Later, became head of the underwriting group and served as chairman of the Underwriting Committee. Ceded those positions as operations at Asset Guaranty became more important, but continued to serve on the Underwriting Committee and as liaison with reinsurance clients.

Asset Guaranty: Developed the concept and business plan for Asset Guaranty in 1988, the first unrated and then "AA" rated monoline insurance company, to provide additional flexibility in offering financial-related insurance and reinsurance products. Asset Guaranty became the driver of earnings for the parent in the 1990s as credit reinsurance, primary municipal bond insurance and Excess-SIPC insurance were added as lines of business. Developed the global credit

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insurance reinsurance business and sourced all of the clients. Participated in the formation of Exporters Insurance Company and the privatization of Foreign Credit Insurance Association, in which EFSG had equity and reinsurance participations. Served on the boards of directors of both companies.

Enhance Re (Bermuda): Developed the concept and business plan for Enhance Re (Bermuda) to provide unrated reinsurance capacity to the financial guaranty and other markets.

Developed concept and initiated process in 1999 to form a London subsidiary to participate in the growing financial guaranty market in Europe. Radian Asset Assurance Limited was eventually licensed by the Financial Services Authority in 2001.

Participated in the formation of Credit-Based Asset Servicing and Securitization LLC, which became the premiere buyer and servicer of distressed residential mortgage assets, and Sherman Financial Group LLC, which became a leading buyer and servicer of distressed credit card receivables.

FGC Services Inc. (July 1984 – November 1986)

Senior Vice President

Responsible for new business development for this intermediary in the financial guaranty sector. Developed business plan to form the first monoline financial guaranty reinsurance company. FGC eventually teamed up with a group from Merrill Lynch to form Enhance Reinsurance Company.

Standard & Poor's Corporation (1976 – 1984)

Managing Vice President, Insurance Ratings

Managed the Insurance Ratings Group, which rated property/casualty, life, financial guaranty, mortgage, and title insurers. Expanded the utilization of claims-paying ratings beyond uses in the capital markets. Developed new product for rating unit investment trusts.

Insurance Company of North America (1971 – 1976)

Auditor

Education:

City University of New York, Baruch School of Business

BBA, 1971

New York University, Graduate School of Business

1973-1978, course work towards MBA completed.

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EXHIBIT C

VI. PRIOR ART MUST BE CONSIDERED IN ITS ENTIRETY, INCLUDING DISCLOSURES THAT TEACH AWAY FROM THE CLAIMS

A prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984) (Claims were directed to a process of producing a porous article by expanding shaped, unsintered, highly crystalline poly(tetrafluoroethylene) (PTFE) by stretching said PTFE at a 10% per second rate to more than five times the original length. The prior art teachings with regard to unsintered PTFE indicated the material does not respond to conventional plastics processing, and the material should be stretched slowly. A reference teaching rapid stretching of conventional plastic polypropylene with reduced crystallinity combined with a reference teaching stretching unsintered PTFE would not suggest rapid stretching of highly crystalline PTFE, in light of the disclosures in the art that teach away from the invention, i.e., that the conventional polypropylene should have reduced crystallinity before stretching, and that PTFE should be stretched slowly.).

However, "the prior art's mere disclosure of more than one alternative does not constitute a teaching away from any of these alternatives because such disclosure does not criticize, discredit, or otherwise discourage the solution claimed...." *In re Fulton*, 391 F.3d 1195, 1201, 73 USPQ2d 1141, 1146 (Fed. Cir. 2004). >See also MPEP § 2123.<

2141.03 Level of Ordinary Skill in the Art [R-6]

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I. < FACTORS TO CONSIDER IN DETERMINING LEVEL OF ORDINARY SKILL

**>The person of ordinary skill in the art is a hypothetical person who is presumed to have known the relevant art at the time of the invention. Factors that may be considered in determining the level of ordinary skill in the art may include: (A) "type of problems encountered in the art;" (B) "prior art solutions to those problems;" (C) "rapidity with which innovations are made;" (D) "sophistication of the technology; and" (E) "educational level of active workers in the field. In a given case, every factor may not be present, and one or more factors may predominate."*In re GPAC*, 57 F.3d 1573, 1579, 35 USPQ2d 1116, 1121 (Fed. Cir. 1995); *Custom Accessories, Inc. v. Jeffrey-Allan Industries, Inc.*, 807 F.2d 955, 962, 1 USPQ2d 1196, 1201 (Fed. Cir. 1986); *Environmental Designs, Ltd. V. Union Oil Co.*, 713 F.2d 693, 696, 218 USPQ 865, 868 (Fed. Cir. 1983).

"A person of ordinary skill in the art is also a person of ordinary creativity, not an automaton." *KSR International Co. v. Teleflex Inc.*, 550 U.S. ___, ___, 82 USPQ2d 1385, 1397 (2007). "[I]n many cases a person of ordinary skill will be able to fit the teachings of multiple patents together like pieces of a puzzle." *Id.* Office personnel may also take into account "the inferences and creative steps that a person of ordinary skill in the art would employ." *Id.* at ___, 82 USPQ2d at 1396. <

The "hypothetical 'person having ordinary skill in the art' to which the claimed subject matter pertains would, of necessity have the capability of understanding the scientific and engineering principles applicable to the pertinent art." *Ex parte Hiyamizu*, 10 USPQ2d 1393, 1394 (Bd. Pat. App. & Inter. 1988) (The Board disagreed with the examiner's definition of one of ordinary skill in the art (a doctorate level engineer or scientist working at least 40 hours per week in semiconductor research or development), finding that the hypothetical person is not definable by way of credentials, and that the evidence in the application did not support the conclusion that such a person would require a doctorate or equivalent knowledge in science or engineering.).

References which do not qualify as prior art because they postdate the claimed invention may be relied upon to show the level of ordinary skill in the art at or around the time the invention was made. *Ex parte Erlich*, 22 USPQ 1463 (Bd. Pat. App. & Inter. 1992). Moreover, documents not available as prior art because the documents were not widely disseminated may be used to demonstrate the level of ordinary skill in the art. For example, the document may be relevant to establishing "a motivation to combine which is implicit in the knowledge of one of ordinary skill in the art." *National Steel Car Ltd. v. Canadian Pacific Railway Ltd.*, 357 F.3d 1319, 1338, 69 USPQ2d 1641,